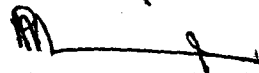


## **Report No. 119**

# **Sunset review of the anti-dumping duties on acetaminophen originating in or imported from the People's Republic of China, France and the United States of America: Final determination**

The International Trade Administration Commission of South Africa herewith presents its Report No. 119: **SUNSET REVIEW OF THE ANTI-DUMPING DUTIES ON ACETAMINOPHENOL ORIGINATING IN OR IMPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA, FRANCE AND THE UNITED STATES OF AMERICA: FINAL DETERMINATION**



**Ms NOMONDE MAIMELA**  
**CHIEF COMMISSIONER**

**PRETORIA**

**06./...06./...2005**

# **INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA**

## **SUNSET REVIEW OF THE ANTI-DUMPING DUTIES ON ACETAMINOPHENOL ORIGINATING IN OR IMPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA, FRANCE AND THE UNITED STATES OF AMERICA: FINAL DETERMINATION**

### **SYNOPSIS**

In accordance with the provisions in Article 11.3 of the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition, unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would likely lead to continuation or recurrence of dumping and injury.

On 30 May 2003 the International Trade Administration Commission of South Africa (Commission) notified the interested parties through Notice No. 1560 in *Government Gazette* No. 24893, that unless a substantiated request is made indicating that the expiry of the duty on Acetaminophenol (subject product) originating in or imported from the People's Republic of China(PRC), France and the United States of America(USA) would likely lead to the continuation or recurrence of dumping and injury, the anti-dumping duties on Acetaminophenol originating in or imported from the PRC, France and USA will expire on 18 June 2004. A detailed response to the review questionnaire was received from Fine Chemicals Corporation (Pty) Ltd (the Applicant) on 18 December 2003.

The investigation was initiated through Notice No.1052 in *Government Gazette* No. 26422 on 11 June 2004. The investigation was initiated after the Commission

considered that there was *prima facie* proof that expiry of the duties would likely lead to the continuation or recurrence of dumping of the subject product originating in and imported from India and that there was *prima facie* proof of the likely continuation and recurrence of material injury. The embassies of the PRC, France and USA were notified of the initiation.

Exporters and importers review questionnaires were sent to various known interested parties, including the government representatives of the PRC, France and the USA. The deadline for comments was 26 July 2004. No responses to the sunset review exporter questionnaires were received from the PRC and the USA. Response to the exporter questionnaire was only received from France, Rhodia Chemie, a manufacturer of the subject product in France, through their representatives, International Trade Services (ITS). The SACU importers also did not respond. However, on 24 August 2004, an importer Glaxo SmithKline South Africa (Pty) responded but the response was rejected by the Commission as it did not have details of their imports from the overseas supplier and they also did not complete a non-confidential response.

The Commission made a preliminary determination that the expiry of the duties on the subject product originating in and imported from the PRC, France and the USA would likely lead to the continuation or recurrence of dumping, and that the expiry of the duties would likely lead to the continuation or recurrence of material injury.

Essential facts letters were sent to all interested parties and the deadline for comments was 31 March 2005. Comments were received from ITS, Adcock Ingram Healthcare and Pfizer Laboratories. The Chinese Ministry of Commerce (Bureau of Fair Trade – BOFT) and the China Chamber of Commerce of Medicines and Health Products Importers and Exporters also submitted their comments.

On 18 May 2005, the Commission made a final determination that the expiry of the duties on the subject product originating in and imported from the PRC, France and the USA would likely lead to the continuation or recurrence of

dumping and that the expiry of the duties is likely to lead to the continuation or recurrence of material injury.

In its deliberations, the Commission considered various factors pertinent to this review, including the competitive position of the industry, health security, the relatively low employment in SACU with regard to the subject product and the need to lower the health cost to consumers. The Commission decided to recommend to the Minister of Trade and Industry that, although higher margins of dumping were calculated during the review, not to recommend an increase in the anti-dumping duties, but that the present anti-dumping duty structure on Acetaminophenol (Paracetamol) originating in or imported from the PRC, France and the United States of America be maintained.

## **1. APPLICATION AND PROCEDURE**

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### **1.1 LEGAL FRAMEWORK**

This investigation was conducted in accordance with the International Trade Administration Act, 2002, (Act 71 of 2001) (the "ITA Act") and the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 (the Anti-Dumping Agreement) and the International Trade Administration Commission Anti-Dumping Regulations (ADR).

In accordance with the provisions in Article 11.3 of the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition, unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.

### **1.2 APPLICANT**

The SACU application was lodged by Fine Chemicals Corporation (Pty) Ltd, a manufacturer of Acetaminophenol (Paracetamol) in the SACU.

### **1.3 INVESTIGATION PROCESS**

On 30 May 2003 the Commission notified the interested parties through Notice No. 1560 in *Government Gazette* No. 24893, that unless a substantiated request is made indicating that the expiry of the duty on

Acetaminophenol originating in or imported from the PRC, France and the USA would be likely to lead to the continuation or recurrence of dumping and injury, the anti-dumping duties on Acetaminophenol originating in or imported from the PRC, France and the USA will expire on 18 June 2004. A detailed response to the review questionnaire was received from Fine Chemicals Corporation (Pty) Ltd (the Applicant) on 18 December 2003

On 29 and 30 April 2004, a verification was carried out at Fine Chemicals' plant in Cape Town.

The investigation was initiated through Notice No.1052 in *Government Gazette* No. 26422 on 11 June 2004. The investigation was initiated after the Commission considered that there was *prima facie* proof that expiry of the duties would likely lead to the continuation or recurrence of dumping of the subject product originating in and imported from India and that there was *prima facie* proof of the likely continuation and recurrence of material injury. The embassies of the PRC, France and USA were notified of the initiation.

Exporters and importers review questionnaires were sent to various known interested parties, including the government representatives of the PRC, France and the USA. The deadline for comments was 26 July 2004. No responses to the sunset review exporter questionnaires were received from the PRC and the USA. Response to the exporter questionnaire was only received from France, Rhodia Chemie, a manufacturer of the subject product in France, through their representatives, International Trade Services (ITS). The SACU importers also did not respond. However, on 24 August 2004, an importer Glaxo SmithKline South Africa (Pty) responded but the response was rejected by the Commission as it did not have details of their imports from the overseas supplier and they also did not complete a non-confidential response.

The Commission made a preliminary determination that the expiry of the duties on the subject product originating in and imported from the PRC,

France and the USA would likely lead to the continuation or recurrence of dumping, and that the expiry of the duties would likely lead to the continuation or recurrence of material injury.

Essential facts letters were sent to all interested parties and the deadline for comments was 31 March 2005. Comments were received from ITS, Adcock Ingram Healthcare and Pfizer Laboratories. The Chinese Ministry of Commerce (Bureau of Fair Trade – BOFT) and the China Chamber of Commerce of Medicines and Health Products Importers and Exporters also submitted their comments.

On 18 May 2005, the Commission made a final determination that the expiry of the duties on the subject product originating in and imported from the PRC, France and the USA would likely lead to the continuation or recurrence of dumping and that the expiry of the duties is likely to lead to the continuation or recurrence of material injury.

#### **1.4 INVESTIGATION PERIOD**

Investigation period for dumping was from 01 January 2003 to 31 December 2003.

The injury investigation involved evaluation of data from 01 January 1998 to 31 December 2003. An estimate of what the situation will be if the duties expire, was also considered.

#### **1.5 PARTIES CONCERNED**

##### **1.5.1 SACU Industry**

The application was lodged by Fine Chemicals Corporation (Pty) Ltd, a manufacturer of Acetaminophenol in the SACU.



### **1.5.2 Exporters/Foreign Manufacturers**

The following exporters/manufacturers were identified as interested parties:

- (a) Mallinckrodt Incorporated, USA
- (b) Rhodia Chemie, France
- (c) Sinochem International Chemicals, China

Rhodia Chemie(Rhodia) through their representatives ITS, responded to the questionnaire and commented to the essential facts letter.

The Chinese exporters did not respond but the Chinese government through the Ministry of Commerce (Bureau of Fair Trade) and the China Chamber of Commerce of Medicines & Health Products Importers & Exporters submitted their comments to the essential facts letter.

### **1.5.3 Importers**

The following SACU importers were identified as interested parties:

- (a) Adcock Ingram Healthcare (Pty) Ltd
- (b) Be Tabs Pharmaceuticals
- (c) Glaxo SmithKline
- (d) Frankel Chemicals
- (e) Gulf Drug

Glaxo SmithKline South Africa (Pty) responded to the questionnaire but the Commission rejected the response as it did not have details of their imports from the overseas supplier and also did not complete a non-confidential response.

Adcock Ingram Healthcare (Pty Ltd(Adcock) and Pfizer Laboratories (Pty) Ltd(Pfizer) did not respond to the questionnaire but commented to the essential facts letter.

## **2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES**

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### **2.1 SUBJECT PRODUCT**

#### **2.1.1 Description**

The subject product is described as Acetaminophenol.

#### **2.1.2 Country of origin/export**

The subject product is exported from the PRC, France and the USA.

#### **2.1.3 Application/end use**

The imported subject product is used in the manufacture of Analgesics (Pain Killer).

#### **2.1.4 Tariff classification**

The subject product is classifiable as follows:

Tariff subheading	Description	Rate of customs duty		
		General	EU	SADC
2924.29 2924.29.05	= Other - Acetaminophenol	10%	10%	free

#### **2.1.5 Other applicable duties and rebates**

The subject product is subject to the following anti-dumping duties:

Tariff subheading	Description	Imported from or originating in	Rate of Anti-Dumping Duty
2924.29.05	Acetaminophenol	United States of America	2,371c/kg
2924.29.05	Acetaminophenol	People's Republic of China	2,573c/kg
2924.29.05	Acetaminophenol	France	58c/kg

No provisions exist in terms whereof the subject product can be imported with rebate of the duty.

#### 2.1.6 Production process

Acetylation of Para-aminophenol in acetic anhydride using stainless steel reactor vessels.

The reaction of Para-aminophenol (APAP) with acetic anhydride produces a crude Acetaminophenol. This crude product is isolated by crystallisation. It is then purified dried *via* fluid bed dryers, milled, screened and packed.

In response to the Commission's "essential facts" letter, Adcock alleged that the uncompetitiveness by the Applicant is due to high input costs. In this regard Adcock indicated that the Applicant does not allow a full synthesis route to manufacture Paracetamol. It indicated one such route, used by Rhodia.

Adcock also indicated that the Applicant purchases APAP and performs the last reaction stage. APAP is not a freely-available commodity, as the manufacturers are only manufacturing this product as an input into their own final stage of Paracetamol manufacture, from which they can realize the full profit potential of the product. Consequently the Applicant purchases the APAP at a relatively high price because they forego the added value available by completing the final stage of the full process. The consequence is that the Applicant

structurally has high input costs, and is engaged in a process with little added-value potential.

The Commission noted that the manufacturers of APAP sell it to their clients as an input in the manufacture of Paracetamol and also manufacture and sell Paracetamol. The afore mentioned indicates that the manufacturers of APAP treat the manufacturing and the selling of this product as separate business entities. It indicated that it is important to note that Paracetamol is sold to the manufacturers of tablets and of other products to be used by the ultimate consumer and this final process is also treated as a separate business unit. The delivery of the final product to the ultimate consumer is an elaborate and lengthy process, which cannot be carried by one entity.

### 3. SACU INDUSTRY

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#### 3.1 INDUSTRY STANDING

Article 11.3 of the Anti-Dumping Agreement provides as follows:

"Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly **substantiated request made by or on behalf of the domestic industry** within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. The duty may remain in force pending the outcome of such a review" (emphasis added).

Article 5.4 of the Anti-Dumping Agreement provides as follows:

"An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry. The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry."

The application is supported by 100 per cent of the SACU industry. The Commission found that the application was made "by or on behalf of the domestic industry".

## 4. DUMPING

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Article 11.3 of the Anti-Dumping Agreement provides as follows:

"Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, **that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.** The duty may remain in force pending the outcome of such a review."

### 4.1 DUMPING

Section 1(2) of the ITA Act (Act 71 of 2002), provides a definition of the term "dumping". The Act provides as follows:

"'dumping' means the introduction of goods into the commerce of the Republic or the common customs area of the Southern African Customs Union at an export price contemplated in section 3(2)(a) that is less than the normal value, as defined in section 32(2), of those goods;"

### 4.2 NORMAL VALUE

Normal values are determined using section 32(2)(b)(i) of the ITA Act as a basis. This section provides as follows:

"'normal value' in respect of any goods, means -

(i) the comparable price actually paid or payable in the ordinary course of trade for like goods intended for consumption in the exporting country or country of origin; or

(ii) in the absence of information on a price contemplated in subparagraph (i), either -

- (aa) the constructed cost of production of the goods in the country of origin when destined for domestic consumption, plus a reasonable addition for selling, general and administrative costs and for profit; or
- (bb) the highest comparable price of the like product when exported to an appropriate third or surrogate country, as long as that price is representative;

Section 32(4) of the ITA Act (Act 71 of 2002) further provides as follows:

"If the Commission, when evaluating an application concerning dumping, concludes that normal value of the goods in question is, as a result of government intervention in the exporting country or country of origin, not determined according to free market principles, the Commission may apply to those goods a normal value of the goods, established in respect of a third or surrogate country."

#### **4.3 EXPORT PRICE**

Export prices are determined in accordance with relevant provisions in section 32(2)(a) of the ITA Act (Act 71 of 2002), which provides as follows:

"'export price', subject to subsections (3) and (5), means the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to that sale;"

Section 32(5) of the ITA Act (Act 71 of 2002) further provides as follows:

"The Commission must, despite the definition of "export price" set out in subsection (2), when evaluating an application concerning dumping that meets the criteria set out in subsection (6), determine the export price for the goods in question on the basis of the price at which the imported goods are first resold to an independent buyer, if applicable, or on reasonable basis".



Section 32(6) of the ITA Act (Act 71 of 2002) provides as follows:

"Subsection (5) applies to any investigation of dumping if, in respect of the goods concerned-

- (a) there is no export price as contemplated in the definition of dumping;
- (b) there appears to be an association or a compensatory arrangement in respect of the export price between the exporter or foreign manufacturer concerned and the importer or the third party concerned; or
- (c) the export price actually paid or payable is unreliable for any other reason".

#### **4.4 ADJUSTMENTS**

Article 2.4 of the Anti-Dumping Agreement provides as follows:

"A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability. In the cases referred to in paragraph 3, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties."

Section 11(1) of the ITA Act (Act 71 of 2002), provides as follows:

"Adjustments shall be made in each case, on its merit, for differences which affect price comparability at the time of setting prices, including, but not limited to-

- (a) conditions and terms of trade;
- (b) taxation;
- (c) levels of trade;
- (d) physical characteristics; and
- (e) quantities."

Both the WTO Anti-Dumping Agreement and the ITA Act provide that due allowance shall be made in each case for differences in conditions and terms of sale, in taxation and for differences affecting price comparability. The Commission considers that for an adjustment to be allowed, quantifiable and verifiable evidence has to be submitted, and it must further be demonstrated that these differences actually affected price comparability at the time of setting the prices.

#### **4.5 COMPARISON OF EXPORT PRICE WITH NORMAL VALUE**

The margin of dumping is calculated by subtracting the export price from the normal value of the product (after all adjustments have been made). The margin is then expressed as a percentage of the export price. If the margin is less than two percent, it is regarded as *de minimis* in terms of the Anti-Dumping Agreement and no anti-dumping duty will be imposed.

##### **4.5.1 Determination of the dumping margin when no exports were made to the SACU during the period of investigation (POI).**

The policy of the Commission requires that exporters should provide details of their exports to other countries when no exports were made to the SACU during the period of investigation.

Section 32(6)(a) of the ITA Act (Act 71 of 2002) provides as follows:

"If there is no export price as contemplated in the definition of dumping, then the export price may be determined on any reasonable basis."

The ITA Act therefore allows the Commission discretion on how to determine an export price in cases where it has to decide on the likelihood of whether dumping will recur. Exports to other countries may therefore be considered if no actual exports were made to the SACU during the POI.

## **4.6 METHODOLOGY IN THIS INVESTIGATION**

### **4.6.1 PRC**

#### **Normal Value**

##### **Type of economy**

In determining the normal value for the PRC, section 32(4) of the ITA Act was applied as a basis.

Section 32(4) of the ITA Act reads as follows:

"If the Commission, when evaluating an application concerning dumping, concludes that the normal value of the goods in question is, as a result of government intervention in the exporting country or country of origin, not determined according to free market principles, the Commission may apply to those goods a normal value of the goods, established in respect of a third or surrogate country."

#### **Information based on "facts available"**

The information in respect of the domestic sales in the PRC was based on the information submitted (facts available) by the SACU industry as no

exporter from the PRC responded in this matter, as is duly provided for in paragraph 32 of the ITAC Anti-Dumping Regulations.

The Applicant used the USA as a third country to determine the normal value for the PRC. It indicated that the selection of USA as a surrogate to PRC is appropriate as the standards of manufacturing pharmaceutical products is the same worldwide and is carried out by multinational companies. In this regard, the Applicant indicated that it is important to mention that Rhodia has a manufacturing facility of subject product in the PRC.

The Applicant based the normal value for the USA on a quote from a manufacturer in the USA. The normal value amounted to US\$8,65 per kg (FOB).

In response to the Commission's "essential facts" letter, the Ministry of Commerce of the PRC – Bureau of Fair Trade (BOFT) stated that the Chinese government noted that it was on 11 June 2004 that ITAC initiated the Acetaminophenol investigation and merely 18 days later, South Africa recognized China's Market Economy Status (MES). BOFT indicated that it is well known that China's market mechanism has experienced dramatic and substantial change over 25 years of reform and opening-up and that more than 40 countries (including South Africa) have recognized this fact through their decision of granting MES on China. It further indicated that the Chinese government holds that ITAC has an opportunity and should take this fact into consideration in the determination on this case. It also indicated that it is unreasonable and unacceptable to use the USA, which is incomparable in terms of production cost, as surrogate to calculate the normal value for China's exporting companies.

BOFT further indicated that, it fully understands the practical difficulties of ITAC in calculating the normal value due to the fact that the exporting companies under investigation did not cooperate. It indicated that it has

motivated the involved companies and the Chamber of Commerce again to submit the relevant information to ITAC.

In response to the Commission's "essential facts" letter, China Chamber of Commerce of Medicines & Health Products Importers & Exporters (CCCMHPIE), indicated that it had gone all out to mobilize the companies involved to cooperate with ITAC but that, no company responded because the exports to South Africa were so small that no company was willing to retain lawyers.

It indicated that Indonesia initiated an anti-dumping investigation on Acetaminophenol in June 2003 and there were five companies that responded to the investigation since Indonesia was the most important export market for the Chinese companies and that these five companies account for about 82 percent market share in China's domestic market in 2003. It further indicated that in order to cooperate with ITAC as fully as possible, CCCMHPIE submitted the detailed information about the normal value of Acetaminophenol which data was adopted by the Indonesian investigation authority in calculating the dumping margin.

CCCMHPIE further indicated that the Indonesian investigation period was from June 2002 to June 2003, which was not fully in accordance with the SACU investigation and that despite this fact, it strongly believed that the data was far more convincing than using the USA as surrogate to calculate the normal value.

In its final determination, the Commission decided to use the USA as third country for the PRC as both countries have the same standards of manufacturing pharmaceutical products, which is carried out by multinational companies who maintain the same manufacturing standards worldwide. In this regard the Commission noted that Rhodia has a plant of manufacturing the subject product in the PRC. It further noted that it was important to remember that the basis for selecting a third country was the

comparability of the level of development of an industry, and not the cost of production.

The Commission noted also that sunset review exporter questionnaires were sent out to Chinese manufacturers of the subject product and to the Chinese government representative. ITAC received no responses. Since CCCMHPIE indicated that no Chinese companies were willing to respond as exports to South Africa were small and that no company was willing to retain lawyers, the Commission had no alternative but to use the USA as a surrogate to calculate the domestic prices in the PRC, as it was the "best information available".

#### **4.6.2 FRANCE**

##### **Normal Value**

##### **Type of economy**

In determining the normal value for France, section 32 (2)(b)(i) of the ITA Act was applied as a basis.

##### **Rhodia**

Rhodia responded to the Commission's sunset review exporter questionnaire and its information was verified. Like products to those exported to the SACU were sold in the domestic market in France in the ordinary course of trade. Invoiced sales to Rhodia's customers were used to calculate the normal value in France.

The cost of credit was deducted from the applicable transactions.

#### **4.6.3 USA**

##### **Normal Value**

##### **Type of economy**

In determining the normal value for the USA, section 32 (2)(b)(i) of the ITA Act was applied as a basis.

##### **Information based on “facts available”**

The information in respect of the domestic sales in the USA was based on the information submitted (facts available) by the SACU industry as no exporter from the USA responded in this matter, as is duly provided for in paragraph 32 of the ITAC Anti-Dumping Regulations.

The normal value was based on a quote obtained by the Applicant from a manufacturer in the USA, which amounted to US\$8,65/kg (FOB).

In response to the Commission’s “essential facts” letter, Adcock stated that the price information used in the situation analysis was used in the anti-dumping review application submitted by the local manufacturer in 2003. It indicated that this, it believed, was inadequately established at the time and based on a limited source of information. It further indicated that it appeared that the information has been accepted as the current situation.

It also stated that the domestic price for Paracetamol in the USA used for the evaluation was US\$8,65/kg and that this was considered by Adcock to be higher than that actually prevailing at the time and was certainly higher than that prevailing at the moment. Adcock indicated that this was clear from the fact that relatively small retail pharmacies in the USA can currently source Paracetamol 500g tablets for between US\$6 and US\$7

per thousand. It indicated that this information was obtained by Adcock from a source in the USA.

Adcock further indicated that using a higher figure than the US\$7/thousand would imply a raw material cost content of Paracetamol alone at 62 percent of selling price. Adcock further indicated that the tablet manufacturer would still have to afford the additional raw materials of the compound for tableting, all processing and packaging costs, distribution costs, inventory costs, etc before his profit element. It indicated that consequently, an input cost for Paracetamol of US\$ 8,65 couldn't be correct for USA manufacturers.

Adcock also indicated that it believed the same was true for prices of the other domestic markets. It also indicated that it disputed the use of the USA as a surrogate for China as one was a developed country and the other a developing country and they were therefore, not comparable.

For purposes of its final determination, the Commission noted that Adcock did not respond to the sunset review importers questionnaire sent to it and only chose to respond to the essential facts letter. It was therefore not regarded as an interested party. It also noted that the information by Adcock of the domestic prices of Paracetamol in the USA could not at that late stage of the investigation be used as it could not be verified and furthermore the information was given in price per tablet, which is not the subject product.



## **4.7 Export price**

### **4.7.1 PRC**

#### **Information based on "facts available"**

The information in respect of the export price in the PRC was based on the information submitted (facts available) by the SACU industry as no exporter from the PRC responded in this matter, as is duly provided for in paragraph 32 of the ITAC Anti-Dumping Regulations.

The export price is based on a quote obtained by the Applicant from a manufacturer in the PRC, which amounted to US\$1.80 per kg.

### **4.7.2 France**

Rhodia responded to the Commission's sunset review exporter questionnaire and its information was verified. The weighted average export price to by Rhodia was based on the invoiced sales to SACU.

#### **Adjustments to export prices**

##### ***Commission***

Rhodia pays its agent commission on each invoice made for export to SACU.

##### ***Inland transport, freight and insurance***

Rhodia invoices its clients on FOB and CIF basis. The freight, insurance and handling charges were deducted.

For purposes of its final determination, the Commission noted the comments from Rhodia regarding the converting of the export price from

US dollars to Euros and decided that Rhodia did not provide sufficient information to explain how the conversion was done. The Commission therefore, decided to use the daily published rates on the date of the export invoice for conversion.

#### **4.7.3 USA**

##### **Information based on “facts available”**

The information in respect of the export price in the USA was based on the information submitted (facts available) by the SACU industry as no exporter from the USA responded in this matter, as is duly provided for in paragraph 32 of the ITAC Anti-Dumping Regulations.

The Applicant based the export price on a quotation obtained during the previous investigation as it failed to obtain new information in this regard.

The export price amounted to a price of US\$3,65 per kg (FOB).

#### **4.8 CONCLUSION - DUMPING**

For purposes of its final determination, the Commission found that the expiry of the duties on the subject product originating in or imported from the PRC, France and the USA would be likely to lead to the continuation or recurrence of dumping.

## 5 MATERIAL INJURY

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Article 11.3 of the Anti-Dumping Agreement provides as follows:

"Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, **that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.** The duty may remain in force pending the outcome of such a review."

### 5.1 DOMESTIC INDUSTRY FOR THE PURPOSE OF DETERMINATION OF INJURY

Article 3 of the Anti-Dumping Agreement is entitled "Determination of injury". Footnote 9 to the word "injury" provides as follows:

"Under this agreement the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article."

### 5.2 GENERAL

Article 3.1 of the Anti-Dumping Agreement provides as follows:

"A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both.

- (a) the volume of the dumped imports and the effects of the dumped imports on the prices in the domestic market for the like products, and

(b) the consequent impact of these imports on domestic producers of such products."

Article 4.1 of the Anti-Dumping Agreement further provides as follows:

"For purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic industry as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products,"

The material injury analysis in this submission relates to the Applicant, which constitutes 100 percent of the total domestic production of the subject product in the SACU. The Commission found that this constitutes "a major proportion" of the total domestic production, in accordance with Article 4.1 of the WTO Anti-Dumping Agreement.

Information with regard to the injury indicators reflects the Applicant's position for the years ensuing the imposition of the current anti-dumping duties, as well as a substantiated estimate of what the effect of the expiry of the duties will have on the Applicant.

### **5.3 IMPORT VOLUMES AND EFFECT ON PRICES**

#### **5.3.1 Import volumes**

With reference to Article 3.1(a), Article 3.2 of the WTO Anti-Dumping Agreement provides as follows:

"With regard to the volume of the dumped import, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member."

In any dumping investigation, the Commission normally uses audited import statistics from SARS to determine the volume of the subject product

entering the SACU from the countries under investigation and other countries. It considers these statistics to be the most reliable.

The following table shows the volume of the alleged dumped imports of the subject product as obtained from SARS and the Applicant's estimate if the duties expire:

**Table 5.3.1**

Kg	1998	1999	2000	2001	2002	2003	Estimate if duties expire
<b>Alleged Dumped imports</b>							
PRC	0	100	7	0	0	0	386
France	100	54	98	85	84	63	72
USA	0	100	14 810	50	9 325	1 500	1 500
Imports from other countries	0	100	13 621	5 400	25 051	50 972	50 972
Total imports	100	71	121	82	116	120	190

The figures in the table above have been indexed due to confidentiality with 1998 or 1999 as the base year.

The table indicates that there were no imports from the PRC during the last three years of 2001 to 2003. Imports from France decreased from 100 index points in 1998 to 63 index points in 2003. Imports from the USA increased from 100 index points in 1999 to 9 325 index points in 2002 and decreased to 1 500 index points in 2003 compared to 2002.

Imports from other countries increased from 100 index points in 1999 to 50 972 index points in 2003.

As the statistics indicate, the subject product was still being imported from the USA and France into the SACU annually despite the imposition of the anti-dumping duties. The only inference that can be drawn from the latter is that the ex-factory price from the USA, France and the PRC was low enough to absorb the customs and anti-dumping duties. Consequently, if the current duties were to be removed the results thereof would be an

increase in imports of the subject product and continuance of exports to the SACU market at prices that would not only adversely affect the Applicant but also effectively excluding it from the SACU market. Fine Chemicals is continuously under pressure, despite the anti-dumping duties, to keep selling prices low. In this regard, the Applicant already suffered material injury, which would be further aggravated if the anti-dumping duties were revoked.

### **5.3.2 Effect on Domestic Prices**

With reference to Article 3.1(a), Article 3.2 of the Anti-Dumping Agreement further provides as follows:

"With regard to the effect of the dumped imports on the prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance."

#### **5.3.2.1 Price undercutting**

Price undercutting is the extent to which the landed cost of the imported product is lower than the ex-factory selling price per unit price of the SACU product.

Information in the following tables indicate that imports from France, USA and the PRC will undercut the SACU product when the current anti-dumping duties were to be removed:

**Table 5.3.2.1 (France)**

	1999	2000	2001	2002	2003	Estimate if duties expire
Price undercutting(R/kg)	100	0	2 457	2 435	3 964	5 171

The figures in the table above have been indexed due to confidentiality with 1999 as the base year.

The landed cost price of the imported product is based on the import statistics for the period 1999 to 2003 and the estimate excludes the current anti dumping duty imposed on imports from France.

**Table 5.3.2.1 (USA)**

	1999	2000	2001	2002	2003	Estimate if duties expire
Price undercutting(R/kg)	0	0	0	0	0	100

The figures in the table above have been indexed due to confidentiality with 1999 as the base year.

The landed cost price of the imported product for the years 1999 to 2003 is based on the import statistics from SARS and the estimate excludes the current anti dumping duty. The estimate is based on a quote obtained by a manufacturer in the USA.

**Table 5.3.2.1 (PRC)**

	1999	2000	2001	2002	2003	Estimate if duties expire
Price undercutting(R/kg)	0	0	0	0	0	100

The figures in the table above have been indexed due to confidentiality with 1999 as the base year.

The landed cost price of the imported product for the year 2000 is based on the import statistics from SARS. The landed cost price for the year 2003 and the estimate is based on a quote obtained by a manufacturer in the PRC.

Information in tables above indicates that the subject imports will undercut the price of the SACU product when the duties are removed.

#### **5.3.2.2 Price depression**

Price depression occurs when the domestic industry experiences a decrease in its selling prices over time. The table below shows the domestic industry's domestic selling price since the duties were imposed, and an estimate for the next year, in the event of the duties expiring:

**Table 5.3.2.2**

	1999	2000	2001	2002	2003	Estimate if duties expire
Applicant selling price(R/kg)	100	103	118	138	145	142

The figures in the table above have been indexed due to confidentiality with 1999 as the base year.

The information in the table indicates that the Applicant will have to reduce its selling price by the same amount of the anti-dumping duty if it were to be removed and therefore result in the Applicant experiencing an increased loss.

The Applicant also indicated that it experienced constant pressure on the price of the subject product as a result of continuing low quotes of prices from countries such as the PRC and France. According to the Applicant, if the anti-dumping duties were revoked the importers will immediately make use of the opportunity to import at the low prices and with the anti-dumping duties out of the way the Applicant's SACU market will decline to zero.

#### **5.3.2.3 Price suppression**

Price suppression is the extent to which increases in the cost of production of the product concerned, cannot be recovered in selling prices. To determine price suppression, a comparison is made of the percentage



increase in cost with the percentage increase in selling price (if any), and whether or not the selling prices have increased by at least the same margin at which the cost of production increased.

The following table shows the Applicant's average costs of production and its average selling prices for the subject product for the years since the duty was imposed, and an estimate for the next year, in the event of the duties expiring:

**Table 5.3.2.3**

	1999	2000	2001	2002	2003	Estimate if duties expire
Price suppression	100	108	103	96	109	111

The figures in the table above have been indexed due to confidentiality with 1999 as the base year.

The information in the table indicates that the Applicant will be forced to suppress its prices more if the duties were to be removed. The Applicant also indicated that material injury has therefore been suffered as a result of price suppression despite the anti-dumping duties being imposed. It would suffice to say that should these anti-dumping duties be revoked, the Applicant would suffer even greater material injury.

The Applicant further stated that the demand for further imports would be intensified as per reasons stated above. In addition, the Applicant indicated that the very favourable Rand/US\$ exchange rate allowed importers to be far more competitive. Thus, if the anti-dumping duties were revoked it can be expected that more than 70 percent of the imports in the SACU market will be imported at dumped prices causing material injury to the SACU industry.

### 5.3.3 Consequent Impact of the dumped imports on the Industry

With reference to Article 3.1(b), Article 3.4 of the Anti-Dumping Agreement provides the following:

"The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance."

#### 5.3.3.1 Actual and potential decline in sales

The following table shows the Applicant's sales volume of the subject product for one year prior to and for all years subsequent to the imposition of the anti-dumping duties, and an estimate for the next year in the event of the expiry of the duties:

**Table 5.3.3.1**

	1998	1999	2000	2001	2002	2003	Estimate if duties expire
Applicant (Kg)	100	83	73	68	81	73	0

The figures in the table above have been indexed due to confidentiality with 1998 as the base year.

The Applicant indicated that the estimation was based on the fact that if the anti-dumping duties were revoked its sales will drop away completely as a result of the importation of dumped products from the USA, France and the PRC. The Applicant indicated that they will cease the production of the subject product and close the plant.

The Applicant also indicated that the SACU demand was approximately 950 tons per annum. It indicated that if the anti-dumping duties are revoked, they would have no sales as companies such as Mallinckrodt (USA), with a manufacturing capacity of 30, 000 tons per annum, would be able to export the entire 950 tons into the SACU at dumped prices.

### 5.3.3.2 Profit

The following table shows the Applicant's profit before interest and tax for all years subsequent to the imposition of the anti-dumping duties, and an estimate for the next year in the event of the expiry of the duties:

**Table 5.3.3.2**

	1999	2000	2001	2002	2003	Estimate if duties expire
Net Profit (R/kg)	100	Negative	26	164	Negative	Negative

The figures in the table above have been indexed due to confidentiality with 1999 as the base year.

The information in the table above indicates that the Applicant will experience losses if the duties were to be removed and thus forcing the closure of the business.

The Applicant indicated that the estimated loss was based on a market share of zero if the anti-dumping duties were revoked because the dumped imports would take up the entire SACU market.

The Applicant indicated that the direct labour involved on this product would have to be re-deployed elsewhere in the organisation. Only if retrenchments were made would the estimated loss be reduced, however, there was a large cost element in retrenchments. It was therefore clear that material injury would be suffered if the anti-dumping duties were revoked.

#### 5.3.3.3 Output

The following table outlines the Applicant's domestic production volume of the subject product one year prior to and for all years subsequent to the imposition of the anti-dumping duties, and an estimate for the next year in the event of the expiry of the duties:

**Table 5.3.3.3**

	1998	1999	2000	2001	2002	2003	Estimate if duties expire
Volume (Tons)	100	107	86	88	102	75	0

The figures in the table above have been indexed due to confidentiality with 1998 as the base year.

The information in the table above indicates that output volume of the Applicant has declined by 25 index points from 1998 compared to 2003.

The Applicant based the estimate on the fact that if the anti-dumping duties were revoked, its sales would drop away completely as a result of the importation of dumped products from the USA, France and the PRC.

The Applicant's output was very closely linked to sales volumes. However, if the anti-dumping duties were revoked, sales would decline to zero and the production facility would be closed to prevent inventory increases.

#### 5.3.3.4 Market share

The following table shows the market share for the subject product one year prior to and for all years subsequent to the imposition of the anti-dumping duties, and an estimate for the next year in the event of the expiry of the duties:

**Table 5.3.3.4.1**

	1998	1999	2000	2001	2002	2003	Estimate if duties expire
% Market Share: Domestic Sales	100	108	74	84	81	67	0

The figures in the table above have been indexed due to confidentiality with 1998 as the base year.

The information in the table indicates that the market share of the SACU product will decrease from 100 index points in 1998 to zero if the duties were to be removed.

The Applicant stated that although the anti-dumping duties imposed in 1999 and 2001 ensured that the USA dumping was curbed, countries such as France and the PRC continued with dumping practices.

The Applicant stated further that the SACU industry lost substantial market share in a growing SACU market. The Applicant also stated that the USA will enter the market as its agent is still trading in SACU. As a result of the low import prices from France and the PRC, the USA will reduce its export prices to "dumped" levels upon entry in the SACU market if the anti-dumping duties were revoked. The Applicant would ultimately lose the prevailing market share and be totally excluded from the SACU market and would therefore have to close the plant that manufactures the subject product.

#### **5.3.3.5 Productivity**

Using the production and employment figures sourced from the Applicant, its productivity in respect of the subject product was as follows for one year prior to and for all years subsequent to the imposition of the anti-dumping duties, and an estimate was also provided for what the productivity would be in the event of the expiry of the duties:

**Table 5.3.3.5**

	1998	1999	2000	2001	2002	2003	Estimate if duties expire
Productivity (kg/employee)	100	97	89	81	91	81	0

The figures in the table above have been indexed due to confidentiality with 1998 as the base year.

The Applicant indicated that the estimation was based on the fact that if the anti-dumping duties were revoked, its sales of the subject product would drop away completely as a result of the importation of the dumped products from the USA, France and the PRC. The Applicant, therefore, would cease the production of the subject product and close the plant.

The Applicant stated that the decline in productivity was directly related to the decline in output due to a reduced market share. This led to a relative increase in the overall cost base as the fixed costs per unit increased as a result of a decline in output.

The Applicant further indicated that the trend from 1998 was a fall in productivity despite the reduction in the number of employees assigned to this product. The trend was indicative of material injury that would be suffered with a loss of the entire SACU market if the anti-dumping duties were revoked. If the output can be increased when the demand for the SACU product increased as a result of the anti-dumping duties that will prevent the dumped imports flowing into the SACU market, productivity would increase.

In response to the Commission's "essential facts letter" Adcock alleged that there has been a steady decline in productivity of the manufacturing by the Applicant and that the decline in productivity in 1996 to 2001 means that:

- The Applicant had steadily lost business for the subject product, despite the anti-dumping duties being imposed and that this loss was not solely due to imports of the subject product as a raw material, but also to the importation of finished dosage forms.
- The Applicant has failed to restructure to improve its competitiveness in the period, and its application showed no evidence of intention to do so in the future.

Adcock alleged that it had reason to believe that the Applicant ascribed an excessive proportion of overheads, specifically for their future product research, to the costs of the subject product unit, thus unfairly loading the costs and reducing apparent profits.

Adcock also indicated that the Applicant by its own admission in their submission do not have a scale of manufacture, which can compete with large-scale manufacturers.

In conclusion, Adcock indicated that the Applicant had high input costs due to not performing the full manufacturing process, and had a plant that was uncompetitive on international scales, and had no intentions of actions to address these issues.

For purposes of its final determination, the Commission noted that there has been a general decline in the sales of the subject product worldwide, which has also affected the Applicant's prices and therefore, it was not entirely correct to ascribe the decline in sales volume by the Applicant to the alleged high input costs and low productivity. The Applicant has been unable to sufficiently increase its selling price in order to cover its costs and realise a profit as a result of the dumped imports largely from France that have continued to be exported to the SACU market despite the duties being imposed in the year 1999. The Commission's verification of the Applicant's cost build-up of the subject product had shown that the apportionment of overheads by the Applicant has been fair and consistent over the years.

The Commission also noted that the manufacturers of APAP sold it to their clients as an input to the manufacturer of the subject product and also manufactured and sold the subject product. The afore-mentioned indicated that the manufacturers of APAP treated the manufacturing and the selling of this product as a separate business entity. It was important to note that the subject product was sold to the manufacturers of tablets and other products to be used by the ultimate consumer and this final process was also treated as a separate business unit. The delivery of the final product to the ultimate consumer was an elaborate and lengthy process, which normally is not performed by one entity.

#### **5.3.3.6 Return on investment**

Return on investment is normally regarded by the Commission as being the profit before interest and tax as a percentage of the net value of assets.

The Applicant stated that the return on owner's equity was not applicable as the product was funded entirely out of trade finance.

#### **5.3.3.7 Utilisation of production capacity**

The following table provides the Applicant's capacity and production for the subject product for one year prior to and for all years subsequent to the imposition of the anti-dumping duties, and an estimate for the next year in the event of the expiry of the duties:

**Table 5.3.3.7**

<b>Tons</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>Estimate if duties expire</b>
Utilisation	100	107	86	88	102	75	0

The figures in the table above have been indexed due to confidentiality with 1998 as the base year.



The utilisation of capacity declined from 100 index points in 1998 to 75 units in 2003.

The Applicant indicated that its capacity utilisation was low as a result of dumped imports entering the market. The revoking of the anti-dumping duties on the USA, China and France will reduce the utilisation to zero as it will lose its total market in SACU.

The Applicant further indicated that there were no plans to increase the production capacity due to the fact that the Applicant had more than sufficient capacity to service the total SACU market.

#### **5.3.3.8 Factors affecting domestic prices**

There were no other known factors that could affect the domestic prices negatively.

#### **5.3.3.9 The magnitude of the margin of dumping**

The Commission found that the subject product was imported at dumped prices into the SACU during the investigation period at the following margins:

**Table 5.3.3.9.1**

Country	Specific Dumping Margin
PRC	R45.56/kg
France	R5.58/kg
USA	R33.26/kg

#### **5.3.3.10 Actual and potential negative effects on cash flow**

The Commission noted that the Applicant experienced a negative cash flow for the 2003 year. This cash out-flow was based on volumes sold into the SACU market. The negative cash flow can be attributed to the imports

from the PRC and France at dumped prices. The Applicant indicated that an increase in the sales volume would immediately generate an increase in cash, as the fixed cost components of the standard or average cost would reduce per kilogram sold.

#### **5.3.3.11 Inventories**

The Applicant provided the following levels of inventories for the years 1998 to 2003 and an estimate for the year if duties expire:

**Table 5.3.3.11**

	1998	1999	2000	2001	2002	2003	Estimate if duties expire
Volume (Kg)	100	218	118	126	273	125	0

The figures in the table above have been indexed due to confidentiality with 1998 as the base year.

The information in the table showed that the inventories have increased by 25 index points in 2003 compared to 1998.

The Applicant stated that if the anti-dumping duties were revoked it would cease production and as a result the stocks would be reduced to zero, as the entire SACU market would be lost to dumped imports. The Applicant also indicated that at the end of 2002 its inventories were significantly higher than the average as a result of a slowdown in sales in the last four months of the year as due to the fact that imports of the subject product were still brought into the SACU market.

#### **5.3.3.12 Employment**

The following table shows the Applicant's employment level for one year prior to and for all years subsequent to the imposition of the anti-dumping duties, and an estimate for the next year in the event of the expiry of the duties:

**Table 5.3.3.12**

	1998	1999	2000	2001	2002	2003	Estimate if duties expire
Units of employment: Total	100	100	100	100	100	100	0

The figures in the table above have been indexed due to confidentiality with 1998 as the base year.

The employment levels remained constant from years 1998 to 2003.

The Applicant stated that a further decrease in sales would lead to a retrenchment of the employees involved in the production of the subject product.

#### **5.3.3.13 Wages**

The Applicant stated that significant retrenchments would result from an expiry of the dumping duties as the imports from the subject countries would increase substantially.

#### **5.3.3.14 Growth**

The Applicant indicated that although the SACU market had grown over the past eight years, its market share had been reduced substantially as a result of dumped imports.

The Applicant further stated that if the duties would be revoked it would lead to its complete loss of SACU market share of the subject product, which would cause significant material injury to the company, as the production plant of the subject product would be closed down.

The Applicant also stated that their plan was to grow the business through exports but unless they can retain a relatively large part of the South African market, this will not be possible, especially if the anti-dumping duties expire.

#### 5.3.3.15 Ability to raise capital or investments

The Applicant stated that their current funding structure permitted them to raise capital with relative ease to finance a potential expansion. However, if the anti-dumping duties were revoked they would be materially injured making it impossible to raise capital for investment and expansion.

In response to the Commission's "essential facts letter" Adcock alleged that the downstream pharmaceutical manufacturing industry (manufacture of dosage-form medicines from various raw materials) was adversely impacted by the excessive duties on the subject product as follows:

- (a) reduced local market potential due to high input prices necessitating artificially high selling prices, causing consumer resistance, reduced purchases and migration to alternative forms of pain relief, and additional consumer costs.
- (b) local manufacturers were increasingly losing market share due to importation of finished products sourced from low-cost manufacturing countries, which were subject to only a normal *ad valorem* duty. This was illustrated by the fact the entire RSA state tender for Paracetamol-containing tablets was awarded to suppliers of imported finished products, despite the extremely low profit margins in the prices tendered by the local industry, and the financial preference factors for local industry, and the financial preference factors for local industry that the State Tender authorities take into account. The State Tender for Paracetamol tablets was more than 60 percent of the local market in volume terms, based on the information available to Adcock.
- (c) local manufacturers were unable to sustain a viable export business of Paracetamol-related products to natural export markets, due to the excessive prices of local subject product from the Applicant.

Adcock indicated that it must be recognized that the dosage-manufacturing industry employed more people in their Paracetamol-related products than did the Applicant in the manufacturing of the subject product. Adcock further alleged that the protection given to the uncompetitive business of the Applicant had adversely affected downstream business and their employment and economic contribution to the economy to a far greater extent than any benefit derived by the Applicant.

Adcock indicated that should excessive anti-dumping duties be continued, they could not continue to support a failing and uncompetitive local manufacturer at the expense of its own business. It indicated that market share of Adcock's major brands was continually being eroded by lower-priced imports.

Adcock indicated that it was presently actively evaluating taking the manufacture of these products offshore, to take advantage of the lower costs available outside the current duty structure, and to protect themselves against the continuing erosion of their market position from manufacturers without these structural disadvantages. It indicated that this step would imply more job losses within Adcock's own local manufacturing facilities than those protected by the Applicant, and may still have the eventual consequence of the Applicant discontinuing its operations of the subject product.

Adcock further indicated that it had reason to believe that other RSA manufacturers were also actively considering moving offshore for part or all of their local Paracetamol-products manufacturing.

In conclusion Adcock indicated that it wished to state its strong opposition to the continuation of the present anti-dumping duties, and it believed that it had shown sufficient grounds to recognize that the overall consequences were increasingly negative. Adcock proposed that the anti-dumping duties be discontinued. Failing this, Adcock proposed that an

urgent evaluation be made of the benefits and disadvantages of the duties to the whole value chain through to the consumer. Adcock indicated that it believed that this would clearly establish that the duties were counter-productive and against the national interest.

For purposes of its final determination, the Commission found that the present investigation was on the active ingredient and not the final product sold to the ultimate consumer and therefore the cost build up and the pricing of the final product was not only dependent on the Paracetamol active ingredient as an input cost but on other costs such as the manufacturing and marketing costs. The Commission also noted that companies such as Adcock, incurred huge research costs in order to develop new products and these research costs as well as marketing costs had an impact on the prices of the final product.

Furthermore, the Commission noted that the Applicant has a right to seek remedies of the alleged unfair trade if its rights to compete fairly in a market were threatened by unfair trade practices.

In response to the Commission's "essential facts letter" ITS stated that in its advise on the essential facts letter, the Commission indicated that there was a likelihood of material injury recurring to the SACU industry if the anti-dumping duties were to be removed. It indicated that this likelihood existed based on amongst others the estimated increase in import volumes and price undercutting when the current duties were withdrawn. It indicated that an examination of the facts clearly did not support this finding by the Commission. It further indicated that the level of anti-dumping duty levied against imports from France was R0.58 per kg and that at the time this duty was imposed it amounted to an *ad valorem* duty of 2,3 percent. It indicated that taking into account the movement in prices on the domestic market, the *ad valorem* duty was currently 2 percent, i.e *de minimis*. It indicated that it therefore followed that the current duty levied against France should have a minimal, if any, impact on the domestic market.

ITS indicated that an examination of import volumes from France over the past three years indicated the following trend:

<u>2002</u>	<u>2003</u>	<u>2004</u>
455 tons	292 tons	11 tons

ITS indicated that from the above analysis, it was clear that imports from France decreased significantly over the past few years and that the main reason for this decrease was the fact that the current price levels were forcing Rhodia out of the market. It indicated that even if the anti-dumping duty were to be withdrawn, Rhodia will not be able to compete.

ITS also indicated that the analysis/hypothesis made by the Commission of what will happen to import volumes and price undercutting if the anti-dumping duty from France was to expire, was not supported by the facts and ITS was therefore asking the Commission to urgently provide it with details of how the estimates were calculated or established. ITS further indicated that the inaccuracy of the Commission's calculation of the estimates was further highlighted if one considered that the current anti-dumping duty applicable to France (R0.58 per kg) based on current prices, was *de minimis* in terms of the Anti-Dumping Regulations and that it should therefore not have any impact on the domestic industry. It also indicated that this duty of R0.58 per kg was more than enough to virtually decimate imports from France. It stated that however, the Commission was now considering to increase the level of duty to R5,58 per kg in order to prevent further injury to the local industry. It indicated that these findings did not add up and that the Commission's decision definitely needed further clarification and explanation.

For purposes of its final determination, the Commission noted that the duties imposed currently were specific and not *ad valorem* and therefore the analysis by ITS that these duties were *de minimis* was incorrect, as

the analysis did not also take into consideration the movement in prices over time.

The Commission also noted that ITS did not request any information on the duties during the deadline set for the responses to the sunset review exporter questionnaire and also to comments to the essential facts letter and had chosen to ask how estimates were done for the import volumes as well as the estimates on price undercutting at this late stage of the investigation. However, information on the pricing was normally regarded by the Commission as confidential and could not be divulged to other parties, especially competing companies.

In response to the Commission's "essential facts letter" Pfizer stated that the products currently sourced from the Applicant were the subject product and Codeine Phosphate and that there were no other local suppliers.

Pfizer also alleged that the latest price increase by the Applicant would result in additional cost to produce Pfizer's range.

Pfizer indicated that they currently manufactured products for the Australian market and utilize cost to Australia and would jeopardize all future opportunities in excess of 40 tons of the subject product and 1 ton of Codeine Phosphate per annum. It indicated that the price increases by the Applicant would have a significant impact on Pfizer's product.

Pfizer indicated that as it was an established multinational pharmaceutical manufacturer, it did not wish to import fully furnished products. It also indicated that importation would more than likely result in a plant closure and resultant unemployment.

Pfizer concluded by indicating that the purchase of the Applicants entity by Aspen Pharmaceuticals appeared to have placed Pfizer Laboratories (Pty) Ltd at a disadvantage in competing locally for the following reasons:



- there was no alternate local supplier of the material sourced from FCC
- current trade barrier (anti-dumping duty) in importing from overseas suppliers
- Aspen had products that were competing with Pfizer brands.

The Commission noted that Pfizer indicated that it was an established pharmaceutical manufacturer and did not wish to import fully finished products as importation would more than likely result in a plant closure and resultant unemployment. The Commission pointed out that the Applicant manufactured Paracetamol which was not an end-product but a product that was sold to manufacturers of tablets and other products for those manufacturers to produce the final product. Therefore, prices of Pfizer's final product are not only dependent on the input cost of the subject product but also dependent on other costs as well, such as the manufacturing and sales and administration costs. The fact that there is no alternate supplier of the subject product in SACU had nothing to do with the fact that the Applicant had complained of unfair trade practices from other players in the market and sought remedial action for that. For Aspen to have products that competed with Pfizer brands was not an issue that could be dealt with by ITAC, but it was advised that if the competition was unhealthy, then Pfizer should complain to the relevant authorities.

#### **5.4 CONCLUSION – MATERIAL INJURY**

The Commission, for purposes of its final determination, decided that the expiry of the anti-dumping duties on Acetaminophenol (Paracetamol) originating in and imported from the PRC, France and the USA would be likely to lead to the continuation or recurrence of material injury.

## **6. SUMMARY OF FINDINGS**

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### **6.1 DUMPING**

The Commission found that the expiry of the duties on the subject product originating in or imported from the PRC, France and the USA would be likely to lead to the continuation or recurrence of dumping,

### **6.2 MATERIAL INJURY**

The Commission found that the expiry of the duties is likely to lead to the continuation or recurrence of material injury to the SACU industry.

## **7. RECOMMENDATION**

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The Commission made a final determination that:

- the expiry of the duties is likely to lead to the continuation or recurrence of dumping; and
- the expiry of the duties is likely to lead to the continuation or recurrence of material injury

In its deliberations, the Commission considered various factors pertinent to this review, including the competitive position of the industry, health security, the relatively low employment in SACU with regard to the subject product and the need to lower the health cost to consumers. The Commission decided to recommend to the Minister of Trade and Industry that, although higher margins of dumping were calculated during the review, not to recommend an increase in the anti-dumping duties, but that the present anti-dumping duty structure on Acetaminophenol (Paracetamol) originating in or imported from the PRC, France and the United States of America be maintained.